

General Information Letter: Imposition of penalty for failure to pay taxes in years prior to UPIA discussed.

September 28, 2000

Dear:

This is in response to your letter dated August 23, 2000 in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

Please be advised that this office represents xxxxxxxxxxxxxxxxxxxxxxxx of xxxxxxxxxxxx, Illinois, concerning taxes, interest and penalties. I have enclosed powers of attorney from both of them, signed and notarized. Please contact me with information concerning the relevant sections of the law used to determine the xxxxxx tax liability.

DISCUSSION

The information concerning your client's tax deficiency as of 9/26/00 is as follows:

1985
Tax 251.00
Interest on tax 311.12
804 penalty 32.00
Interest on penalties 39.84
Payments through collections 111.94
Owe as of today 522.02

1986
Tax 278.00
Interest on tax 324.69
804 penalty 35.00
Late payment penalty 223.61
Interest on penalties 40.35
Payments through collections 40.00
Owe as of today 861.65

1987
Tax 420.00
Interest on tax 454.23
804 penalty 53.85
Late payment penalty 313.77
Interest on penalties 56.96
Owe as of today 1298.81

1988
Tax 446.00
Interest on tax 442.22
804 penalty 57.00
Late payment penalty 306.45
Interest on penalties 55.41
Owe as of today 1307.08

1989
Tax 494.00
Interest on tax 445.34
804 penalty 63.00
Late payment penalty 309.80
Interest on penalties 55.37
Owe as of today 1367.51

1990
Tax 614.00
Interest on tax 498.25
804 penalty 78.85
Late payment penalty 348.24
Interest on penalties 62.91
Owe as of today 1602.25

1992
Tax 165.00
Interest on tax 104.16
Late payment penalty 73.76
Owe as of today 342.92

1994
Tax 9.00
Interest on tax .06
Owe as of today 9.06

The deficiencies appear to all result from the taxpayers having filed their returns but then failing to submit the required payments for the tax due. Accordingly, for each year involved the original tax due has been continuously accruing interest and penalties. The procedure when a taxpayer fails to pay estimated tax is described in §804 of the IITA. For tax years 1984 – 1993 Ill. Rev. Stat. ch 120, para. 8-804 (1985) controls:

(a) In general. In case of any underpayment of estimated tax by a taxpayer, except as provided in subsection (d), the taxpayer shall be liable to a penalty in an amount determined at the rate of 24% per annum upon the amount of the underpayment (determined under subsection (b) for the period of the underpayment (determined under subsection (c)).

(b) Amount of underpayment. For purposes of subsection (a), the amount of the underpayment shall be the excess of:

(1) the amount of the installment which would be required to be paid if the estimated tax were equal to 80% of the tax shown on the return for the taxable year or, if no return was filed, 80% of the tax for such year, over,

(2) The amount, if any, of the installment paid on or before the last date prescribed for payment.

Beginning with tax year 1986 and going through tax year 1993 an additional penalty was imposed under Ill. Rev. Stat. ch 120, para. 10-1005 (1985) which states in part:

(a) In general. If any amount of tax required to be shown on a return prescribed by this Act is not paid on or before the date required for filing such return (determined without regard to any extension of time to file), a penalty shall be imposed at the rate of 6% per annum upon the tax underpayment unless it is shown that such failure is due to reasonable cause. This penalty shall be in addition to any other penalty determined under this Act.

(d) No interest on penalty. No interest shall be imposed on the penalty provided by this Section.

(e) The provisions of this Section shall apply to all taxable years ending on or after January 1, 1986.

The adoption of the Uniform Penalty and Interest Act ("UPIA") changed the penalty provisions starting in 1994. Section 804 of the Illinois income tax now reads:

(a) In general. In case of any underpayment of estimated tax by a taxpayer, except as provided in subsection (d) or (e), the taxpayer shall be liable to a penalty in an amount determined at the rate prescribed by Section 3-3 of the Uniform Penalty and Interest Act upon the amount of the underpayment (determined under subsection (b)) for each required installment.

(b) Amount of underpayment. For purposes of subsection (a), the amount of the underpayment shall be the excess of:

(1) the amount of the installment which would be required to be paid under subsection (c), over

(2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

Section 3-3 of the Uniform Penalty and Interest Act ("UPIA") must therefore be referenced to determine the penalty under §804. This section states:

(b) A penalty of 15% of the tax shown on the return or the tax required to be shown due on the return shall be imposed for failure to pay:

(1) the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability); or...

Additional penalties are imposed for the underpayment of tax required to be paid with the return as described in § 1005:

(a) In general. If any amount of tax required to be shown on a return prescribed by this Act is not paid on or before the date required for filing such return (determined without regard to any extension of time to file), a penalty shall be imposed in the manner and at the rate prescribed by the Uniform Penalty and Interest Act.

(b) The provisions of this Section shall apply to all taxable years ending on or after January 1, 1986. (Source: P.A. 87-205.)

The penalty for §1005 violations is found in section 3-3(b)(2) of the UPIA which states:

(2) the full amount of any tax required to be shown due on a return and which is not shown (penalty for late payment or nonpayment of additional liability), within 30 days after a notice of arithmetic error, notice and demand, or a final assessment is issued by the Department. In the case of a final assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this paragraph (2) shall be imposed at the expiration of the period provided for the filing of a protest.

Finally, interest was added to the deficiencies and penalties. For deficiencies and penalties arising from tax years 1985-1993, interest is calculated under Ill. Rev. Stat. ch 120, para. 10-1005 (1985):

(a) In general. If any amount of tax required to be shown on a return prescribed by this Act, including tax withheld by an employer, is not paid on or before the date prescribed for payment of such tax (determined without regard to any extensions), interest on such amount at the rate of shall be paid in the manner and at the rate of 9% per annum (or at such adjusted rate as is established under Section 6621(b) of the Internal Revenue Code)¹ shall be paid for the period from such date to the date of payment of such amount, except that if a waiver of restrictions under Section 9072 on the assessment and collection of such amount has been filed, and if notice and demand by the Director for the payment of such amount is not made within 30 days after the filing of such waiver, interest shall not be imposed on such amount for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(b) Interest treated as tax. Interest prescribed under this Section on any tax, including tax withheld by an employer, or on any penalty, shall be deemed assessed upon the assessment of the tax or penalties to which such interest relates and shall be collected and paid on notice and demand in the same manner as tax. Any reference in this Act to the tax imposed by this Act shall be deemed also to refer to interest imposed by this Section on such tax.

(g) Exception as to estimated tax. This Section shall not apply to any failure to pay estimated tax required by Section 803. 3

For tax year 1994, interest is added pursuant to §1003:

(a) In general. If any amount of tax imposed by this Act, including tax withheld by an employer, is not paid on or before the date prescribed for payment of such tax (determined without regard to any extensions), interest on such amount shall be paid in the manner and at the rate prescribed in Section 3-2 of the Uniform Penalty and Interest Act for the period from such date to the date of payment of such amount, except that if a waiver of restrictions under Section 907 on the assessment and collection of such amount has been filed, and if notice and demand by the Director for the payment of such amount is not made within 30 days after the filing of such waiver, interest shall not be imposed on such amount for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(b) Interest treated as tax. Interest prescribed under this Section on any tax, including tax withheld by an employer, or on any penalty, shall be deemed assessed upon the assessment of the tax or penalties to which such interest relates and shall be collected and paid on notice and demand in the same manner as tax. Any reference in this Act to the tax imposed by this Act shall be deemed also to refer to interest imposed by this Section on such tax.

(c) Exception as to estimated tax. This Section shall not apply to any failure to pay estimated tax required by Section 803. (Source: P.A. 87-205.)

Section 3-2 of the UPIA states in part:

(a) Interest paid by the Department to taxpayers and interest charged to taxpayers by the Department shall be paid at the annual rate determined by the Department. That rate shall be the underpayment rate established under Section 6621 of the Internal Revenue Code.

(b) The interest rate shall be adjusted on a semiannual basis, on January 1 and July 1, based upon the underpayment rate going into effect on that January 1 or July 1 under Section 6621 of the Internal Revenue Code.

(c) Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax and penalty due. If notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of such notice and demand, interest under this Section on the amount so paid shall not be imposed for the period after the date of the notice and demand.

Accordingly, the taxpayers have been assessed deficiencies for numerous years based upon a failure to pay tax due. This has led to interest and penalties being imposed and accruing since the date of assessment. No other legal issues appear to be involved.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at www.revenue.state.il.us. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

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